



STATE OF WASHINGTON

PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION OF THE STATE OF WASHINGTON

IN RE COMPLIANCE
WITH RCW 42.17

PAT MOONEY

Respondent.

PDC CASE NO: #04-310

REPORT OF INVESTIGATION

I.

BACKGROUND

- 1.1 On August 7, 2003, Pat Mooney filed a Candidate Registration, Public Disclosure Commission (PDC) Form C-1, declaring his candidacy for re-election to Anacortes Port Commissioner, District 4, in the November 2003 general election.
- 1.2 Brian Wetcher filed PDC Form C-1 on August 15, 2003, declaring his candidacy for Anacortes Port Commissioner, District 4, in the November 2003 general election.
- 1.3 The initial vote count declared Pat Mooney the winner by 22 votes. However, due to the small margin separating the candidates, the votes were recounted and certified on November 26, 2003 declaring Pat Mooney the winner by 21 votes.
- 1.4 On November 7, 2003, Michael Evans filed a complaint with the PDC alleging that Pat Mooney exceeded the mini reporting limits and failed to timely file reports of contributions and expenditures.
- 1.5 On December 4, 2003, Brian Wetcher filed a complaint with the PDC alleging that Pat Mooney exceeded the mini reporting limits, failed to timely file reports of contributions and expenditures, failed to maintain current and accurate records, and failed to disclose the source of all contributions. Because the complaint was similar to the complaint filed by Michael Evans on November 7, 2003, Mr. Wetcher's complaint was combined with PDC Case No 04-310.
- 1.6 On January 21, 2004, Brian Wetcher filed a complaint with the Washington State Attorney General's office and the Skagit County Prosecuting Attorney's office, giving notice to each under RCW 42.17.400(4) that he intends to fill a Citizen

*"The public's right to know of the financing of political campaigns and lobbying
and the financial affairs of elected officials and candidates far outweighs
any right that these matters remain secret and private."*

RCW 42.17.010 (10)



Action in Superior Court if neither agency takes action within 45 days. The Attorney General's Office forwarded the complaint to the PDC for review and recommendation. The "45-day letter" was identical to Mr. Wetcher's December 4, 2003 complaint and was added to Case #04-310.

II.

SCOPE

- 2.1 Staff reviewed Mr. Evans' complaint letter dated November 4, 2003.
- 2.2 Staff reviewed Mr. Wetcher's complaint letter dated December 4, 2003.
- 2.3 Staff reviewed Mr. Wetcher's "45-day letter" complaint received from the Attorney General's Office on January 21, 2004.
- 2.4 Staff reviewed written responses from Pat Mooney, dated November 29, 2003 and January 6, 2004.
- 2.5 Staff interviewed Pat Mooney under oath on January 27, 2004.
- 2.6 Staff interviewed Brian Wetcher under oath on January 27, 2004.
- 2.7 Staff reviewed Pat Mooney's campaign records.

III.

LAW

3.1 **RCW 42.17.040** states in part:

(1) Every political committee, within two weeks after its organization or, within two weeks after the date when it first has the expectation of receiving contributions or making expenditures in any election campaign, whichever is earlier, shall file a statement of organization with the commission and with the county auditor or elections officer of the county in which the candidate resides, or in the case of any other political committee, the county in which the treasurer resides.

3.2 **RCW 42.17.080** states in part:

(2) At the following intervals each treasurer shall file with the commission and the county auditor or elections officer of the county in which the candidate resides... a report containing the information required by RCW 42.17.090:

- (a) On the twenty-first day and the seventh day immediately preceding the date on which the election is held; and

- (b) On the tenth day of the first month after the election...
- (c) On the tenth day of each month in which no other reports are required to be filed under this section...

3.3 RCW 42.17.090 states in part:

- (1) Each report required under RCW 42.17.080 (1) and (2) shall disclose the following:
 - (a) The funds on hand at the beginning of the period;
 - (b) The name and address of each person who has made one or more contributions during the period,
 - (f) The name and address of each person to whom an expenditure was made in the aggregate amount of more than fifty dollars during the period covered by this report, and the amount, date, and purpose of each such expenditure.

3.4 WAC 390-16-105 states in part:

- (1) A candidate or candidate's authorized committee, as those terms are defined in RCW 42.17.020, shall not be required to comply with the provisions of RCW 42.17.060 through 42.17.090 except as otherwise prescribed in WAC 390-16-038, 390-16-115, and 390-16-125 when neither aggregate contributions nor aggregate expenditures exceed the amount of the candidate's filing fee provided by law plus a sum not to exceed three thousand five hundred dollars and no contribution or contributions from any person other than the candidate within such aggregate exceed three hundred dollars.

3.5 WAC 390-16-125 states in part:

Whenever there is reason to believe that any of the limitations specified in WAC 390-16-105 or 390-16-111 will or may be exceeded, the candidate or committee may apply to the commission for authorization to change reporting options.

- (1) If the application is made more than thirty days prior to the date of the election, the application will be considered approved without further action by the commission if the person making application submits:

- (a) A PDC form C-1 or C-1pc indicating the intention of using the full reporting system provided by RCW 42.17.040 - 42.17.090;
- (b) A PDC form C-3 and form C-4 with appropriate Schedules disclosing all contributions and expenditures reportable under RCW 42.17.090 for the election campaign or in the case of continuing political committees for the calendar year.
- (c) A statement affirming that all known candidates for the office being sought have been notified personally of the application stating the manner and date of such notification. In the case of a ballot proposition, the statement shall affirm that the committee treasurer of all committees identifiable from the records of the county elections officer or public disclosure commission to be opposing or supporting the proposition have been notified personally of the application stating the manner and date of such notification.

(2) If the application is made within thirty days of the date of the election, the application shall be approved only by authorization of the commission executive director.

(a) Prior to such approval being granted, the executive director shall determine that the application contains those documents shown in subsection (1)(a), (b) and (c) above.

(b) The commission staff shall investigate why the applicable requirements were not complied with in the first instance and whether or not the probability of exceeding such limitations was reasonably foreseeable. If the investigation shows that the declaration by the candidate, committee or other person filed under WAC 390-16-115 was made in good faith and that the probability of exceeding such limitations was not reasonably foreseeable, the executive director will approve the reporting option change conditioned upon full future compliance with all applicable requirements of chapter 42.17 RCW.

(3) When one candidate or committee on either side of an election campaign has been approved to change reporting options under subsection (1) above, all other candidates and/or committees may change reporting options by meeting the requirements of subsection (1)(a), (b) and (c).

(4) Any person who knowingly or negligently causes or permits the limitations specified in these regulations to be exceeded shall be deemed to have violated the applicable provisions of RCW 42.17.040 - 42.17.090.

IV

FINDINGS

- 4.1 On August 7, 2003, Pat Mooney filed PDC Form C-1 declaring his candidacy for re-election to Anacortes Port Commissioner, District 4, in the November 2003 general election. Mr. Mooney's C-1 Form indicated that he chose the mini reporting option thus declaring that he would raise or spend no more than \$3,500 and would accept no more than \$300 in the aggregate from any one contributor except himself. The campaign is required to disclose the location and time that the campaign books are open to the public on the eighth day prior to the election (October 27th). That section of Form C-1 was left blank. (**Exhibit #1**)
- 4.2 On October 31, 2003, Mr. Mooney filed an amended Form C-1 changing his reporting option to full reporting. His amended Form C-1 supplied the location and hours for the public to view his campaign records; information that is to be available to the public on the eighth day prior to the election. However, the information was not provided to the public until four days prior to the election, four days later than required. (**Exhibit #2**)

- 4.3 According to Mr. Mooney's final C-4 report, his campaign accepted \$5,379 in contributions and spent \$4,944 on his campaign, thus exceeding the mini reporting limits by \$1,877 in contributions and \$1,444 in expenditures.
- 4.4 Brian Wetcher filed PDC Form C-1 on August 15, 2003, declaring his candidacy for Anacortes Port Commissioner, District 4, in the November 2003 general election. Mr. Wetcher also chose the mini reporting option for his campaign, thus declaring that he would abide by the aggregate contribution and expenditure limit of \$3,500 and individual contributor limit of \$300.
- 4.5 According an article in the November 5, 2003 issue of the *Skagit Valley Herald*, Mr. Wetcher had a 44-vote lead at the end of election day, however all votes had not yet been counted. The November 19th certification of the vote showed Mr. Mooney with a 22-vote lead, resulting in an automatic recount because the margin was within one-half of one percent. According to the Skagit County Auditor, the final vote count on November 26, 2003, declared Pat Mooney the winner by 21 votes out of 6,617 votes cast.
- 4.6 On November 7, 2003, Michael Evans, Campaign Manager for Brian Wetcher, filed a complaint with the PDC alleging that Pat Mooney exceeded the mini reporting limits and failed to timely file reports of contributions and expenditures. **(Exhibit #3)**
- 4.7 On December 4, 2003, Brian Wetcher filed a complaint with the PDC alleging that Pat Mooney exceeded the mini reporting limits, failed to timely file reports of contributions and expenditures, failed to maintain current and accurate records, and failed to disclose the source of all contributions. **(Exhibit #4)** Because the complaint was similar to the complaint filed by Michael Evans on November 12, 2003, Mr. Wetcher's complaint was combined with PDC Case No 04-310.
- 4.8 On January 21, 2004, Brian Wetcher filed a complaint with the Washington State Attorney General's office and the Skagit County Prosecuting Attorney's office, giving notice to each under RCW 42.17.400(4) that he intends to fill a Citizen Action in Superior Court if neither agency takes action within 45 days. The Attorney General's Office forwarded the complaint to the PDC for review and recommendation. The "45-day letter" was identical to Mr. Wetcher's December 4, 2003 complaint and was added to Case #04-310.
- 4.9 Pat Mooney made several telephone contacts with PDC staff member Sally Parker prior to the election regarding his campaign exceeding the mini reporting limitations. Mr. Mooney's contacts with PDC are documented in staff telephone logs. Mr. Mooney's campaign spending and his contacts with PDC staff and Mr. Wetcher are summarized in chronological order below. A detailed chronology

created from Mr. Mooney's disclosure reports submitted beginning October 31, 2003 is available in **Exhibit #5**.

- **October 9, 2003:** Mr. Mooney signed a contract for \$1,050 for 70 radio ads to run from October 15th through November 3, 2003. At that point, his campaign had already spent \$2,750 and the order placed for the radio ads put his expenditures at \$3,800, \$300 over the aggregate limit of the mini reporting option.
- **October 20, 2003:** Mr. Mooney contacted PDC staff member Sally Parker and stated that he had chosen the mini reporting option for his campaign and had spent over \$3,500. Mr. Mooney was told that permission to change to the full reporting option could only be granted by the PDC Executive Director and, that because the election was in less than 30 days, permission would only be granted under extraordinary circumstances. Mr. Mooney then stated that he would "*pull his money back out to stay under \$3,500*" since the majority of the contributions to his campaign were from his personal funds. By October 20th, Mr. Mooney had spent \$3,117 in monetary expenditures. Therefore, the October 9th order for the radio ads put his campaign expenditures at \$4,167.
- **October 23, 2003:** Mr. Mooney paid his obligation of \$1,050 to the radio station.
- **October 24, 2003:** Mr. Mooney left a voice mail for Ms. Parker stating that he would call back later. On that date, Mr. Mooney contributed and spent an additional \$627 for postage and mailing putting his total monetary expenditures at \$4,794.
- **October 26, 2003:** Mr. Wetcher stated that after a candidate forum, he spoke with Mr. Mooney who assured him he would have no problem meeting the mini reporting criteria. Mr. Mooney stated he could not remember discussing his campaign expenditures during that conversation.
- **October 27, 2003:** Mr. Mooney loaned an additional \$1,200 to his campaign.
- **October 28, 2003:** Mr. Mooney contacted Ms. Parker and stated that he had recently totaled his campaign expenditures and had spent \$4,291, thus exceeding the limits of mini reporting. (PDC reports show he actually had spent \$4,794 by that date.) He stated that he kept a separate campaign account and all contributions came from his personal funds with the exception of five contributions totaling \$800 to \$900. Ms. Parker told Mr. Mooney that exceeding the mini reporting spending limits was a violation of RCW 42.17

and to file all disclosure reports immediately with a letter explaining the reason for exceeding the mini reporting limits.

- **October 29, 2003:** Mr. Mooney requested that PDC staff fax him disclosure forms and mail copies to his home address.
- **October 30, 2003:** Mr. Mooney stated to PDC staff that he would be mailing his completed disclosure forms on Friday, October 31, 2003. He was reminded that he did not have permission to exceed the \$3,500 spending limit because he had not requested a change in reporting options more than 30 days prior to the election. In a subsequent call later the same day, staff assisted Mr. Mooney with the preparation of his disclosure reports.
- **October 31, 2003:** Mr. Mooney faxed his campaign disclosure reports to staff to review. Staff assisted Mr. Mooney in completing his reports.
- **November 11, 2003:** Mr. Mooney submitted a letter to the PDC with his amended Form C-1 changing from mini to full reporting. (**Exhibit #6**) He stated in his letter:

“It was discovered on 10/23/03 that I had reached \$3,061.26 in expenditures, with many more bills to come in to me...I ran my campaign of November 1999 on the Mini-Report, and assumed I could do the same this year. Due to increase costs, it ran higher than expected. With the pressures of a one man campaign I discovered on 10/23/03, that I had gone over limits, I notified the committee.”

- **November 20, 2003:** Philip Stutzman, PDC Director of Compliance, advised Mr. Mooney by letter that his request to change to the full reporting option was not appropriate since it was not made until after the election.

Pat Mooney submits written response, received by the PDC on November 21, 2003, to Mr. Evans' complaint. (**Exhibit #7**)

- 4.10 As noted earlier, Michael Evans filed a complaint with the PDC on November 7, 2003 alleging that Pat Mooney exceeded the mini reporting limits and failed to timely file reports of contributions and expenditures. Mr. Evans' complaint stated that Mr. Mooney “...has tried to gain political advantage for himself by overspending and reporting less than others would under the law.”
- 4.11 As stated earlier, on December 4, 2003, Mr. Wetcher filed a complaint with the PDC alleging that Mr. Mooney exceeded the mini reporting limits, failed to timely file reports of contributions and expenditures, failed to maintain current and

accurate records, and failed to disclose the source of all contributions. The complaint alleged that by failing to notify the Wetcher campaign that the \$3,500 spending limit would be exceeded, Mr. Mooney gained an unfair advantage. Mr. Wetcher stated in part:

“Without approval from the PDC’s executive director, Commissioner Mooney expended \$4,906 on his campaign, \$1,406 (40%) more than the \$3,500 limit for the Mini reporting option. Additionally Commissioner Mooney failed to notify my campaign committee or me that he was exceeding the \$3,500 limit, which gave Commissioner Mooney an unlawful and unfair advantage.

In the election, Commissioner Mooney garnered 3,314 votes (50.08%), and I, Brian Wetcher, garnered 3,293 (49.76%). The 21-vote (0.32%) difference in the votes forced an automatic recount. If only 11 voters of those 21 voters had decided to vote for me instead of Commissioner Mooney, I would have won by 3304 votes to 3303 votes. Commissioner Mooney’s unlawful and unfair 40% advantage in expenditures almost certainly influenced at least that many voters.

Since he knowingly or negligently violated the Public Disclosure Law, Commissioner Mooney’s violations probably affected the outcome of this election, and the result of this election should be declared void (RCW 42.17.390(1)).”

- 4.12 Mr. Mooney submitted a written response to the complaint received on January 8, 2004. **(Exhibit #8)** In his letter, Mr. Mooney stated that his violation was not intentional and knowing, but was due to negligence and an overwhelming workload of business, community, civic and family activities. Mr. Mooney stated that he was already contractually obligated to spend \$1,050 on radio advertising when he discovered that his expenditures would exceed the mini reporting limits. Mr. Mooney stated:

“In the midst of this very busy time, during the weekend of October 18-19, I examined the campaign’s checking account to see exactly where I was with our finances. I was shocked to realize that the amount of money I had spent at that time (\$3,061.23), plus the amount of money I was contractually obligated to spend (\$1,050), would mean that I would exceed the limit of Mini-reporting. Looking back now, I should have realized this was happening when I signed the radio advertisement, but I did not. I have no excuse for that; I was just too involved in other things to recognize that this was occurring...I was also advised to call my opponent and advise that I was going to exceed the Mini reporting limit.”

- 4.13 Mr. Mooney was interviewed under oath on January 27, 2004. Mr. Mooney stated that he spent \$2,040 during his 1999 Port Commissioner campaign and felt that the \$3,500 mini reporting limit would be sufficient for his 2003 campaign. Mr. Mooney said he did not anticipate a sitting Port Commissioner campaigning for his opponent. He said that caused him to do more advertising than he had planned for at the start of the campaign. He admitted that he neglected to maintain current expenditure records and said he could not cancel the orders he had placed that put him over the \$3,500 mini reporting limit. Mr. Mooney stated:

“And so I was just really too busy at the time so a lot of things slipped by. I didn’t look at bills as they come in and born and raised in Anacortes so nobody had to check me for paying my bills. They said go ahead and take it, we’ll bill you. So it was a loose campaign by one person and things did slip by.”

- 4.14 Mr. Mooney said he that at the start of the campaign, he did not have a budget in mind. He planned on purchasing radio and newspaper advertising, but did not research the cost prior to signing the contracts. He stated:

“I knew I was going to do newspaper ads, I knew I was going to do radio ads, but they just got bigger than what I anticipated... I actually increased my newspaper ads because by going to a four-week period I got a little better buy on it. Like any merchant, the more you buy the less it is. And so that’s why it increased there and the same way in the radio, if you went a little more you got more coverage. Extended coverage. And that’s just part of it. And then all of the other newspapers and periodicals that I advertised in like a little paper in La Conner and a little paper on Guemes Island. It just all added up and so I spend \$1,400 more than I should have.”

- 4.15 On November 18, 2003, Mr. Wetcher sent an email to PDC staff stating that he spoke with Mr. Mooney on October 26, 2003, after attending a candidate forum on Guemas Island. Mr. Wetcher stated that Mr. Mooney assured him that he would have no problem meeting the mini reporting criteria. (**Exhibit #9**) Mr. Wetcher’s email stated in part:

“We discussed...as well as some concerns my campaign staff had expressed to me about the amounts of money he seemed to be spending in his campaign. He personally assured me that he was a committee of one, he had not had the time to go out and raise any where near the \$3500 limit, and he would certainly have no problem meeting the mini reporting criteria, and that his books would be open and available for public inspection upon request at his campaign address. None of these statements

proved to be true... Even if Mr. Mooney is given the benefit of the doubt about his initial financing 'realization,' he continued to spend the unlawful contributions and to deliberately lie about it directly to the people he was required to notify...

My campaign had the opportunity to receive many more donations than we accepted; we also had the opportunity to use radio and televised campaign advertisements, as well as mass mailings. I turned those opportunities down because I believed that \$3500 was a reasonable and ethical campaign expenditure limit for such an office, and because my opponent had committed to the same regulatory limits and criteria, as of the final date for lawfully filing a change in campaign financing status."

- 4.16 Mr. Mooney denied that he told Mr. Wetcher that he would stay within the mini reporting limit. He stated:

"In Mr. Wetcher's Complaint, he alleges that I told him on October 26 that I would stay within the Mini-reporting limit. That is incorrect; I told him no such thing. Why would I say that when I had already reported to the PDC that I was going to exceed the Mini reporting limit? Upon reflection, I should have told Mr. Wetcher that I was going to exceed the Mini reporting limit, as suggested by the PDC. I have no real excuse for not doing this, other than to say that dealing with Mr. Wetcher was uncomfortable for me."

- 4.17 Mr. Wetcher was interviewed under oath on January 27, 2004. He stated that his campaign turned down contributions in order to comply with the mini reporting limitations. Mr. Wetcher stated that, "We had individuals who did offer to put ads in the newspaper for us, to put ads on the radio for us, that they would actually contract for them." Mr. Wetcher stated that his opinion was that Mr. Mooney won the election because of direct mail and radio advertising. Mr. Wetcher stated:

"There's not a doubt in my mind that Mr. Mooney could have gained just those 11 votes simply by being the only voice on the radio. And yes, I could have spent \$1,500 out of the \$3,500 on radio but that would have pretty much eliminated a lot of the other public venues that are expected in Anacortes... We could have targeted a lot of things, direct mailings. We did no direct mailing... It was just not affordable."

- 4.18 Mr. Wetcher stated that if he had known that his opponent was going to spend more than \$3,500, he would not have chosen mini reporting for his campaign. He stated:

“We certainly would have reported full reporting if we had known that Mr. Mooney was going to, even if we had known Mr. Mooney was going to go over legally or unlawfully. We would have chosen full reporting to have that advantage and flexibility.”

- 4.19 In Mr. Mooney’s January 6, 2004 written response to the complaint, he stated his opinion that he did not win the election because he outspent Mr. Wetcher. He stated:

“Mr. Wetcher argues that my exceeding the limit by \$1,406 effected the election. I disagree, and challenge him or anyone else to show how campaign expenditures directly effect any election, let alone this one. There are numerous examples of individuals being elected who spend less than an opponent. For example, in my 1999 election, I spent approximately \$2,000 and my opponent spent about \$6,500. Yet I won.

We all know there are many, many factors that determine the outcome of an election. For example, I received an endorsement from the Anacortes American newspaper on October 22, 2003. How do we measure the impact of that event against my spending \$1,406 more than the Mini reporting limit? There is simply no evidence that my spending that money caused Mr. Wetcher to lose.”

- 4.20 Mr. Wetcher’s complaint stated that Mr. Mooney failed to file a C-3 report disclosing a \$300 deposit made on November 6, 2003 and reported on the Schedule A report filed with the PDC on November 11, 2003. Mr. Mooney filed that C-3 report on January 27, 2004, 48 days late, disclosing the source of the contribution. Mr. Mooney stated that he thought he had previously mailed the C-3 form to the PDC and was not aware that it had not been received. He provided a copy of the report from his records during his interview with PDC staff.

Respectfully submitted this 17th day of February 2004.



Sally Parker
Political Finance Specialist

EXHIBITS LIST

- Exhibit #1** Pat Mooney's Candidate Registration, PDC Form C-1.
- Exhibit #2** Pat Mooney's amended PDC Form C-1.
- Exhibit #3** Complaint filed by Michael Evans dated November 7, 2003.
- Exhibit #4** Complaint filed by Brian Wetcher dated December 4, 2003
- Exhibit #5** PDC generated spreadsheet of the Mooney campaign.
- Exhibit #6** Pat Mooney's letter to the PDC, dated November 11, 2003.
- Exhibit #7** Pat Mooney's written response, dated November 20, 2003, to Michael Evans' complaint..
- Exhibit #8** Pat Mooney's written response to the complaint, dated January 6, 2004, to Brian Wetcher's complaint.
- Exhibit # 9** November 18, 2003 email from Brian Wetcher to PDC staff.



Candidate Registration

C1
(6/01)

DATE FILED PDC
AUG 7 2003

Candidate's Name (Give candidate's full name.) <u>PAT D. MOONEY</u>			Telephone Numbers (360) 293-3260
Candidate's Committee Name (Do not abbreviate.) <u>PAT D. MOONEY COMMITTEE TO ELECT</u>			()
Mailing Address <u>2010 41 ST</u>			Fax Number ()
City <u>ANACORTES</u>	County <u>SKAGIT</u>	Zip + 4 <u>98221</u>	E-Mail Address <u>(Re District 1 SR "5")</u>
1. What office are you running for? <u>PONT COMMISSIONER</u>			Do you now hold this office? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
2. Political party (if partisan office) <u>N/A</u>			3. Date of general or special election <u>11/4/03</u>
4. How much do you plan to spend during your entire election campaign, including the primary and general elections? Based on that estimate, choose one of the reporting options below. If no box is checked you are obligated to use Option II, Full Reporting. See instruction manuals for information about reports required and changing reporting options. <input checked="" type="checkbox"/> Option I MINI REPORTING: In addition to my filing fee of \$ <u>2400</u> , I will raise and spend no more than \$3,500, including any charges for inclusion in state and local voters pamphlets. I will not accept more than \$300 in the aggregate from any contributor except myself. <input type="checkbox"/> Option II FULL REPORTING: I will use the Full Reporting system. I will file the frequent, detailed campaign reports required by law.			

5. Treasurer's Name and Address. Candidate may be treasurer. List deputy treasurers on attached sheet. <input type="checkbox"/> Continued on attached sheet <u>PAT D. MOONEY 2010 41 ST</u>	Daytime Telephone Number (360) 293-3260
6. Committee Officers. List name, title and address. Continue on attached sheet if necessary. See reverse for definition of "officer." <input type="checkbox"/> Continued on attached sheet <u>N/A</u> <u>SWAIR, Spencer; Pres, 614 ST ANACORTES, WA 98221</u>	

7. Campaign Bank or Depository <u>U.S. BANK</u>	Branch <u>ANACORTES</u>	City <u>ANACORTES</u>
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8. Related or Affiliated Political Committees. List name, address and relationship. <u>N/A</u>	<input type="checkbox"/> Continued on attached sheet
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9. Campaign books must be open to the public, except on a weekend or legal holiday, during the eight days before the election: (a) on the eighth day for two consecutive hours between 8 a.m. and 8 p.m.; if the eighth day is a legal holiday - two consecutive hours on the seventh day between 8 a.m. and 8 p.m.; and (b) on the other weekdays, by appointment between 8 a.m. and 8 p.m. Specify location and hours below. It is not acceptable to provide a post office box or an out-of-area address. Street Address, Room Number, City Hours [Two consecutive hours; see 9(a)]

In order to make an appointment, contact the campaign at (telephone, fax, e-mail): ()	
10. CERTIFICATION: I certify that this report is true, complete and correct to the best of my knowledge. Candidate's Signature <u>[Signature]</u>	Date <u>8/6/03</u>

Please advise us about which forms and instructions you need. Remember, candidates must file a Financial Affairs Statement (F-1) unless a current one is already on file with PDC. Check all boxes that apply.

<input checked="" type="checkbox"/> I already have financial affairs and campaign disclosure forms and instructions.	
<input type="checkbox"/> I am using Mini Reporting and, therefore, do not need the other campaign disclosure forms. In addition, I have already filed my Financial Affairs Statement and need no additional F-1 forms.	
<input checked="" type="checkbox"/> I will obtain all forms and instructions from my county elections office.	
<input type="checkbox"/> I want PDC to mail me:	<input type="checkbox"/> the F-1 instruction booklet (which includes forms) <input type="checkbox"/> the appropriate campaign disclosure forms and instructions.

Distribution of This Report:
ORIGINAL - Public Disclosure Commission
COPY - County Elections Office (Auditor)
COPY - Your own records
(Note: City candidates contact City Clerk to see if local filing is required.)

SEE INSTRUCTIONS ON REVERSE

EXHIBIT # 1
1 of 1



Candidate Registration

C1
(6/01)

DATE FILED PDC
OCT 31 2003

Candidate's Name (Give candidate's full name.) <u>PAT D MOONEY</u>			Telephone Numbers <u>(360) 293-3260</u>	
Candidate's Committee Name (Do not abbreviate.) <u>PAT D MOONEY</u>			()	
Mailing Address <u>2010 41st</u>			Fax Number ()	
City <u>ANACORTES</u>	County <u>SKAGIT</u>	Zip + 4 <u>98221</u>	E-Mail Address	
1. What office are you running for? <u>Port Commissioner</u>		Legislative District, County or City <u>40th SKAGIT</u>	Position No. <u>4</u>	Do you now hold this office? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
2. Political party (if partisan office) <u>N/A</u>			3. Date of general or special election <u>11/4/03</u>	
4. How much do you plan to spend during your entire election campaign, including the primary and general elections? Based on that estimate, choose one of the reporting options below. If no box is checked you are obligated to use Option II, Full Reporting. See instruction manuals for information about reports required and changing reporting options.				

- ☐ Option I MINI REPORTING: In addition to my filing fee of \$____, I will raise and spend no more than \$3,500, including any charges for inclusion in state and local voters pamphlets. I will not accept more than \$300 in the aggregate from any contributor except myself.
- ☒ Option II FULL REPORTING: I will use the Full Reporting system. I will file the frequent, detailed campaign reports required by law.

5. Treasurer's Name and Address. Candidate may be treasurer. List deputy treasurers on attached sheet. <input type="checkbox"/> Continued on attached sheet		Daytime Telephone Number
<u>PAT D MOONEY 2010 41st ANACORTES, WA 98221</u>		<u>(360) 293-3260</u>
6. Committee Officers. List name, title and address. Continue on attached sheet if necessary. See reverse for definition of "officer." <input type="checkbox"/> Continued on attached sheet		

Pres Spencer Swain

7. Campaign Bank or Depository <u>Whidbey Bank</u>	Branch <u>ANACORTES</u>	City <u>ANACORTES</u>
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8. Related or Affiliated Political Committees. List name, address and relationship.

N/A

☐ Continued on attached sheet

9. Campaign books must be open to the public, except on a weekend or legal holiday, during the eight days before the election: (a) on the eighth day for two consecutive hours between 8 a.m. and 8 p.m.; if the eighth day is a legal holiday - two consecutive hours on the seventh day between 8 a.m. and 8 p.m.; and (b) on the other weekdays, by appointment between 8 a.m. and 8 p.m. Specify location and hours below. It is not acceptable to provide a post office box or an out-of-area address.

Street Address, Room Number, City

1010 12th Shipping Room, IN BACK

Hours [Two consecutive hours; see 9(a)]

5:30 - 7:30 PM

In order to make an appointment, contact the campaign at (telephone, fax, e-mail): (360) 293-3260

10. CERTIFICATION:

I certify that this report is true, complete and correct to the best of my knowledge.

Candidate's Signature

Date 2nd filing

10/29/03

Please advise us about which forms and instructions you need. Remember, candidates must file a Financial Affairs Statement (F-1) unless a current one is already on file with PDC. Check all boxes that apply.

- ☒ I already have financial affairs and campaign disclosure forms and instructions.
- ☐ I am using Mini Reporting and, therefore, do not need the other campaign disclosure forms. In addition, I have already filed my Financial Affairs Statement and need no additional F-1 forms.
- ☒ I will obtain all forms and instructions from my county elections office.
- ☐ I want PDC to mail me: ☐ the F-1 instruction booklet (which includes forms) ☐ the appropriate campaign disclosure forms and instructions.

Distribution of This Report:

ORIGINAL - Public Disclosure Commission

COPY - County Elections Office (Auditor)

COPY - Your own records

(Note: City candidates contact City Clerk to see if local filing is required.)

SEE INSTRUCTIONS ON REVERSE

EXHIBIT #2

1 of 1

RECEIVED

NOV 12 2003

Public Disclosure Commission

November 7, 2003

Mr. Stutzman,

Enclosed is my complaint alleging a violation of reporting practice as well as unfair advantage over another campaign, The Committee to Elect Brian Wetcher, of which I am the campaign manager.

According to PDC rules and state regulations, we must be notified if Pat Mooney changes reporting as well as he must obtain Executive Director of the PDC approval before changing. This appears to NOT have happened and I am looking to file this complaint based on this information. In looking at Mr. Money's finances, there are material expenditures; signs with stakes, that he used that are not listed on any expenditure form. While these signs with stakes may be from his first campaign, I was told that he must report their usage at fair market value.

Please let me know if there is anything more you need from me. Fairness is essential here and I seek to remedy this matter through your office.

Respectfully,

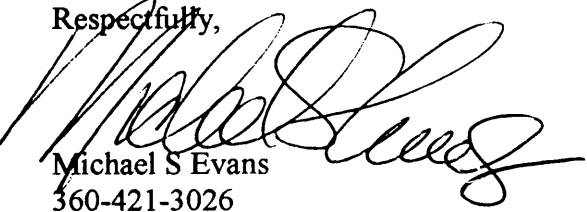

Michael S Evans
360-421-3026

EXHIBIT #3
1 of 4

Fascimile to: Phil Stutzman, Compliance Director
360-753-1112

From: Michael Evans, 360-421-3026

of Pages: 18 including cover

Subject: Formal Complaint (Pat Mooney, Port
Commissioner, Port of Anacortes)

RECEIVED

NOV 12 2003

Public Disclosure Commission

Dear Mr. Stutzman,

I am submitting this complaint and hope that it is complete
for you to review and respond.

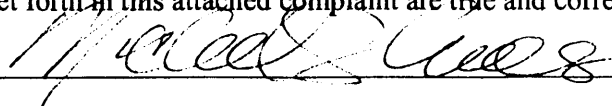
This issue was made apparent upon a review of Mr.
Mooney's records on October 31, 2003.

EXHIBIT #3
2 of 4

3 EXHIBIT #3
of 4

**Certification for a
Complaint to the Washington State Public Disclosure Commission Relating to an
Elected Official or Candidate for Public Office
(Notary Not Required)**

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the facts set forth in this attached complaint are true and correct.

Your signature: 

Your printed name: Michael Evans

Street address: 1718 28th Street

City, state and zip code: Anacortes, Washington 98221

Telephone number: 360-293-7048

E-Mail Address: (Optional) _____

Date Signed: 11/3/2003

Place Signed (City and County): Anacortes, Skagit
City County

*RCW 9A.72.040 provides that: "(1) A person is guilty of false swearing if he makes a false statement, which he knows to be false, under an oath required or authorized by law. (2) False swearing is a misdemeanor."

Pat D. Mooney who is a Port of Anacortes Port Commissioner in District Four is alleged to have violated WAC 390.16.125 Mini campaign reporting -- Exceeding limitations, according to documentation obtained from the Public Disclosures Commission website on October 31, 2003. I have researched and reviewed the PDC website and spoken with PDC staff, Tony Perkins, and cannot find any evidence that a filing exists after the original Candidate Registration (C1) was filed on August 7, 2003, claiming under item four of that registration, Option 1 Mini Reporting. Furthermore, several Aggregate totals listed in Mr. Mooney's Cash Receipts Monetary Contributions (C3) have lines drawn through as if to correct reporting errors and keep those totals below \$300. I would like to request an audit of those records and potential errors listed as, Dakota Creek Ship Yard, Lyle Mooney, and Alan Buchan. Those corrected totals appear to be larger. It would appear that if one is going to raise and spend over \$3,500 to get elected one would fall into the Full Reporting category and be filing frequent contribution and expenditure reports (Forms C-3 and C-4, respectively). To do so after the fact appears to violate WAC 390.16.125. Furthermore, an alleged violation of the Public Disclosure Law, chapter 42.17 RCW appears to exist; whereas Mr. Mooney allegedly has tried to gain political advantage for himself by overspending and reporting less than others would under the law.

RECEIVED

NOV 12 2003

Public Disclosure Commission

3
EXHIBIT
4 of 4

**Brian Wetcher
814 26th Street
Anacortes, WA 98221**

RECEIVED
DEC 5 2003
Public Disclosure Commission

Ms. Vicki Rippie, Executive Director
Public Disclosure Commission
711 Capitol Way #206 - PO Box 40908
Olympia, WA 98504-0908

Re: Formal Complaint Against Commissioner Pat Mooney, Port of Anacortes

Introduction

I am filing a complaint alleging that Commissioner Pat Mooney, the Port of Anacortes, violated several sections of the Washington State Open Government Act (RCW 42.17) during the 2003 election. I ran against Commissioner Mooney in the November 4, 2003 election for the District 4 Commissioner for the Port of Anacortes.

Without approval from the PDC's executive director, Commissioner Mooney expended \$4,906 on his campaign, \$1,406 (40%) more than the \$3,500 limit for the Mini reporting option. Additionally Commissioner Mooney failed to notify my campaign committee or me that he was exceeding the \$3,500 limit, which gave Commissioner Mooney an unlawful and unfair advantage.

In the election, Commissioner Mooney garnered 3,314 votes (50.08%), and I, Brian Wetcher, garnered 3,293 votes (49.76%). The 21-vote (0.32%) difference in the votes forced an automatic recount. If only 11 voters of those 21 voters had decided to vote for me instead of Commissioner Mooney, I would have won by 3304 votes to 3303 votes. Commissioner Mooney's unlawful and unfair 40% advantage in expenditures almost certainly influenced at least that many voters.

Since he knowingly or negligently violated the Public Disclosure Law, Commissioner Mooney's violations probably affected the outcome of this election, and the result of this election should be declared void (RCW 42.17.390(1)).

Description of Violations

Time Line of Events

To assist in the events that led up to this complaint, I've included Table I, which is a list of events in reverse chronological order.

Table I. Timeline of Events (in reverse chronological order)

Date	Event	Event Description	Cumulative Expenses	Cumulative Deposits
11/26/03	Automatic recount results posted	Mooney 3314 votes (50.08%) Wetcher 3289 votes (49.77%)		
11/19/03	Official election results posted	Mooney 3311 votes (50.09%) Wetcher 3293 votes (49.76%)		
11/11/03	Letter to Sally Parker, PDC, from Pat Mooney	Notification of disclosures for the week ending November 7, 2003		
11/11/03	Letter to Phil Stutzman, PDC, from Pat Mooney	Mooney "submits my records of C1 reporting be changed from Mini-Reporting to Full Reporting"		
11/11/03	C4 and Schedule A forms filed	Both forms show \$300 contribution made on 11/06/03, but no C3 form was filed.		
11/07/03	\$75.00 for Radio Ads \$37.12 for Frontier Industries		\$4906.00	
11/06/03	\$300.00 Deposit (No C3 form)			\$5377.31
11/04/03	General Election			
11/03/03	Complaint filed	Michael Evans, Wetcher's campaign manager, files formal complaint with the PDC		
10/31/03	C3, C4, Schedule A, and Schedule L forms Filed	Mooney posts a new bank account with Whidbey Island Bank		
10/31/03	C1 Form filed	Mooney filed C1 form, indicating a change from Mini Reporting to Full Reporting 4 days before the election		
10/31/03	Request to review books of account	Michael Evans, Wetcher's campaign manager, requests to review books		
10/28/03	Loren Hoboy calls PDC to inquire about record access	PDC reports they will contact Mooney and request a submittal for online posting		
10/28/03	\$100.00 Deposit	Alan Buchan		\$5077.31

Date	Event	Event Description	Cumulative Expenses	Cumulative Deposits
10/27/03	\$1200 Deposit	Mooney Loan #4 (\$4,327.31 cumulative)		\$4977.31
10/27/03	Books of Account to be open for inspection	During the 8 days preceding an election, the books of account are open for public inspection		
10/26/03	Wetcher questions Mooney at Guemes Island Forum about expenditures	In conversation, Mr. Mooney assured me that he would have no problem meeting the Mini Reporting criteria		
10/24/03	\$627.31 Expense	Mailing and Postage	\$ 4793.88	
10/24/03	\$627.31 Deposit	Mooney Loan #3 (\$3,127.31 cumulative)		\$3777.31
10/23/03	\$1050 Expense	Radio Ads purchased on 10/9 were paid.	\$4166.57	
10/23/03	The day Mooney says he realized that he was going to exceed the \$3,500 limit.	"It was discovered on 10/23/03 that I reached \$3,061.26 in expenditures, with many more bills to come to me" (Mooney 11/11/03 letter to Stutzman)	*	*
10/15/03	\$366.87 Expense	Mailing and postage	\$3116.57	
10/15/03	\$100.00 Deposit	Lyle Mooney		\$3150.00
10/15/03	Absentee Ballots Arrive			
10/9/03	\$517.13 Expense	Printing of brochures	\$2749.70	
10/9/03	\$500.00 Deposit	Mooney Loan #2 (\$2,500.00 cumulative)		\$3050.00
10/9/03	\$1050.00 Contract	Mooney signs contract with KLKI		
10/7/03	\$97.50 Expense	Ads in newspaper	\$2232.57	
10/6/03	\$100.00 Expense \$873.60 Expense \$471.47 Expense	Ads in What's Really Happening Anacortes American Signs	\$2135.07	
10/3/03	Reporting Option Deadline	30 Day Deadline for changing from Mini Reporting to Full		
9/26/03	\$450.00 Expense	Signs	\$690.00	
9/22/03	\$300.00 Deposit	Dakota Creek		\$2550.00
9/16/03	\$138.32 Expense	Voter mailing list	\$240.00	
9/16/03	\$2000.00 Deposit	Mooney Loan #1		\$2250.00
9/15/03	\$101.68 Expense	Miscellaneous	\$101.68	
9/8/03	\$250.00 Deposit	Dottie Seward		\$250.00
9/7/03	C1 form filed (Signed 8/6/03)	Mooney files C1 form, choosing to use the Mini Reporting option. No location or hours for inspection of Mooney's campaign books was provided. Names U.S. Bank as his campaign account.		

Mini Campaign Reporting – Exceeding Limitation Violations

Commissioner Mooney violated RCW 42.17.080 and 42.17.090 and WAC 390-16-105 by accepting contributions totaling \$5,377 and making expenditures totaling \$4,906 or more in excess of the \$3,500 mini reporting limit (Lawrence Soriano, PDC Case No. 02-263).

Commissioner Mooney violated WAC 390-16-125 by failing to “apply to the commission for authorization to change reporting options”. WAC 390-16-125(2)(a) requires that the application to change reporting options include the C-1, C-3, and C-4 forms, as well as “a statement affirming that all candidates have been notified personally stating the manner and date of such notification.”

To change reporting options, the PDC Mini Campaign Manual (p. 1) states that the candidate should send a letter to the PDC that:

- 1) explains why the candidate anticipates the limits of the reporting option originally chosen will be exceeded;
- 2) explains why the factors contributing to the change were not originally anticipated;
- 3) confirms the date and manner in which each opposing candidate was notified of the change.

Seven (7) days after the election, Commissioner Mooney submitted a cryptic letter to Phil Stutzman, PDC’s Director of Compliance, in which Commissioner Mooney writes, “I respectfully submit my records of C1 reporting be changed from Mini-Reporting to Full Reporting.” The letter did not ask the PDC’s executive director for authorization to change reporting options, and it did not include verification that each opposing candidate had been notified. Rather Commissioner Mooney’s letter represents an admission of wrong doing with an expectation of forgiveness, which is absolutely unacceptable of an elected official who has sworn to uphold the laws of the Washington state.

As a result, Commissioner Mooney *never* applied for authorization to change reporting options, *and* the Public Disclosure Commission’s executive director *never* approved an authorization to change reporting options (WAC 390-16-125 specifies that “the application shall be approved only by authorization of the commission executive director”).

Per WAC 390-16-125(4), Commissioner Mooney also violated the applicable provisions of RCW 42.17.040 – 42.17.090 since he “knowingly or negligently caused or permitted the limitations” to be exceeded. The PDC Mini Campaign Reporting manual (p. 4) clearly states, “...the campaign must receive *prior* (emphasis added) approval from PDC’s executive director before exceeding the limits imposed by mini reporting. The approval to change reporting options within 30 days of the election is not automatic and will only be granted under extraordinary circumstances.” In his communications with the PDC, Commissioner Mooney has never claimed that there were anything but ordinary circumstances. Mr. Mooney’s statement in the *Skagit Valley Herald*, November 10th, that “you can’t predict three months ahead of time how much money you’re going to spend until you discover you did it,” is not acceptable under the law.

Commissioner Mooney violated RCW 42.17.065(5) by failing to “maintain books of account accurately reflecting all contributions and expenditures on a current basis within five business days of receipt or expenditure.” On October 15, 2003, (20 days before the election), Commissioner Mooney’s expenditures exceeded \$3,000. In his letter to the PDC, dated November 11, 2003, Commissioner Mooney states, “It was discovered on 10/23/03 that I had reached \$3,061.26 in expenditures, with many more bills to come to me.” By his own admission, Commissioner Mooney says that he discovered on October 23 that he was going to exceed the limit – 8 days after his expenditures had exceeded \$3,000. Commissioner Mooney’s failure to keep his books accurate and up-to-date is *gross negligence*.

Commissioner Mooney violated WAC 390-16-125(1)(c) by failing to submit “a statement affirming that all known candidates for the offices being sought have been notified personally of the application stating the manner and date of such notification.” Commissioner Mooney *never* notified my campaign committee or me that he was exceeding the \$3,500 limit. Quite to the contrary, Commissioner Mooney personally assured me that he would have no problem meeting Mini Reporting criteria on October 26, 2003.

Commissioner Mooney violated RCW 42.17.080 by failing to file a C3 report for the \$300 bank deposit that was made on November 6, 2003. Commissioner Mooney also violated RCW 42.17.242 by concealing identity of source of this deposit.

Possibilities of Other Violations

Several other aspects of Commissioner Mooney's campaign may have been unlawful and unfair. I urge the PDC to exercise its authority as allowed by WAC 390-37-063 to investigate the Commissioner Mooney's campaign more thoroughly. Some dubious aspects of Commissioner Mooney's campaign are included in the following paragraphs.

Did Commissioner Mooney violate RCW 42.17.060(1) by failing to open a bank account specifically for his campaign contributions? Commissioner Mooney's C1 form, filed August 7, 2003, indicates that his campaign bank was U.S. Bank. Commissioner Mooney's C1 form, filed October 31, 2003, indicates that his campaign bank was Whidbey Bank, a different bank. Why did Commissioner Mooney switch banks?

Did Commissioner Mooney violate RCW 42.17.065(5) by failing to maintain books of account accurately reflecting all contributions and expenditures on a current basis within five business days of receipt or expenditure? Did Commissioner Mooney fail to record or report the "red" campaign signs (the earlier set of signs were blue) and wooden stakes that appeared in the final weeks of the election?

Did Commissioner Mooney violate RCW 42.17.010(3) by presenting a conflict of interest between the public trust and private interest? On September 22, 2003, Commissioner Mooney received a \$300 contribution from Dakota Creek Industries, Inc. Dakota Creek is a tenant of the Port of Anacortes, and Commissioner Mooney has voted to spend more than \$3,000,000 of public money to the direct benefit of Dakota Creek. Does Commissioner Mooney's company, Piston Services, conduct business with Dakota Creek?

Discussion

Whether the probability of exceeding such limitations was reasonably foreseeable

Before the executive director approves an application to change to full reporting, the staff is required to "investigate why the applicable requirements were not complied with in the first instance and whether or not the probability of exceeding such limitations was reasonably foreseeable" (WAC 390-16-125(2)(b)).

On October 9, 2003 (26 days before the election), Commissioner Mooney's campaign expenditures on October 9 totaled \$2749.70. Commissioner Mooney deposited \$500 into his campaign, bringing his personal loans to a total of \$2,500. Commissioner Mooney's personal loans eventually totaled \$4,327.31, which amounted to 80% of the total contributions to his campaign. Mr. Mooney's statement that he became aware of pending bills, including the KLKI radio ad bill of \$1050.00, on October 23rd cannot be taken at face value. He became aware of his expenditures on the dates that he incurred the bills, not when he paid them. In the case of the KLKI radio ad bill he signed the contract on 10/9/03. The ads were scheduled to run from October 15th until November 3rd. Mr. Mooney had time to cancel those ads and conform to the law or to notify my campaign that he was going to exceed the spending limit. It is clear that by October 9, the combination of Commissioner Mooney's debt exposure and campaign expenditures had made him aware that he was going to exceed the \$3,500 Mini Reporting limit.

Commissioner Mooney acted as his own campaign treasurer and was required by law to "maintain books of account accurately reflecting all contributions and expenditures on a current basis within five business days of receipt or expenditure" (RCW 42.17.080(5)). Since he only made 9 deposits and 13 expenditures during his campaign, Commissioner Mooney only needed a *simple* budget and a *simple* checkbook to foresee his campaign spending! The fact that Commissioner Mooney, acting as his own campaign treasurer, did not foresee the probability of exceeding campaign contributions represents *gross negligence* on his part.

Commissioner Mooney is thoroughly familiar with Mini campaign reporting. In his letter to the PDC, dated November 11, 2003, Commissioner Mooney states, "I ran my campaign of November 1999 on the Mini-Report, and assumed that I could do the same this year." Additionally, Commissioner Mooney has successfully owned and operated an Anacortes business, and as Port Commissioner, he is responsible for a multi- million budget. For a man with Commissioner Mooney's background and experience, the probability of exceeding campaign financing limits was *most definitely* foreseeable.

Probably affecting the outcome of the election

The election was decided in Commissioner Mooney's favor by 3,314 votes to 3,293 votes, a 21-vote difference. If only 11 voters of those 21 voters had decided to vote for me instead of Commissioner Mooney, I would have won by 3304 votes to 3303 votes. Commissioner Mooney's unlawful and unfair 40% advantage in expenditures was used for newspaper and radio advertisements and certainly influenced at least 11 voters.

That Commissioner Mooney's violations probably affected the election results can be illustrated in the following 3 ways:

1. the dramatic difference in election results from a similar campaign, the Thibert/Hopley race.
2. the inequity of campaign advertising that resulted when Commissioner Mooney failed to notify me that he was exceeding \$3,500 limit for the Mini Reporting option.
3. the difference in voting trends between the early voters (the absentee ballots) and the late voters (the poll ballots)

1. The Merrill Thibert / Steve Hopley Race – Similar Campaign, Different Results

In a similar campaign (first-time candidate Brian Wetcher vs. incumbent Pat Mooney), first-time candidate Steve Hopley ran against incumbent Merrill Thibert. Both Mr. Hopley and Mr. Thibert chose to use the Mini Reporting option for their campaigns and both stayed under the mandatory \$3500.00. Mr. Hopley ran on similar issues of restoring the public trust in the Commission and improving the working relationship with the City of Anacortes.

First-time candidate Steve Hopley won the election with 3,938 votes (58.12%) versus 2,831 votes (41.78%) for incumbent Merrill Thibert. Note that the voters in all 5 districts are allowed to vote for two Port Commissioners; so voters cast votes in the Thibert/Hopley race and in the Mooney/Wetcher race.

2. The inequity in campaign advertising due to Commissioner Mooney's failure to notify

In the last three weeks of the campaign, my campaign committee and I became concerned about the number of ads and the content of the radio advertisements that were being aired in support of Commissioner Mooney. By that time however, we had reached our \$3,500 campaign limit, and it was too late to get approval to change our reporting option. As a result we were legally incapable of countering the radio advertisements with our own advertisements. As indicated by the signed contract with KLKI and the attached invoice, Mr. Mooney on October 9th purchased 70 ads (30seconds each) which hit the airwaves every day, throughout day from October 15 (timed to coincide with the arrival of the absentee ballots) until November 3rd the day before the election. This represents a significant advantage over my ability to reach voters in the last days.

We could have chosen to ignore the campaign financing laws, as Commissioner Mooney did, and exceed the campaign-spending limit to pay for counter radio advertisements. However, as I stated in my email to Sally Parker dated November 18th, "my campaign had the opportunity to receive many more donations than we accepted; we also had the opportunity to use both radio and televised campaign advertisements, as well as mass mailings. I turned those opportunities down because I believed that \$3500 was a reasonable and ethical campaign expenditure limit for such an office, and because my opponent had committed to the same regulatory limits and criteria, as of the final date for lawfully filing a change in campaign financing status."

I also stated in my letter that, "on the evening of October 26, following a candidate forum on Guemes Island, Mr. Mooney and I had a private conversation while waiting for the return ferry. We discussed some threatening telephone messages and anonymous letters directed against my campaign, as well as some concerns my campaign staff had expressed to me about the amounts of money he seemed to spending in his campaign. He personally assured me that he was a committee of one, he had not had the time to go out and raise any where near the \$3500 limit, and he would certainly have no problem meeting the mini reporting criteria and that his books would be open and available for public inspection upon request at his campaign address. None of these statement proved to be true."

On October 31, 2003 at 10:AM, Michael Evans, my campaign manager, contacted the telephone number on Commissioner Mooney's C1 form, but a woman informed him that Commissioner Mooney (who acted as his own campaign treasurer) was unavailable. The woman replied that Commissioner Mooney would return his call. Mr. Evans did not receive a return phone call until 4:00P.M.

If we had been notified as required by WAC 390-16-125(c), we may have been able to respond. At this late date, even if we had been notified that Commissioner Mooney was changing to the Full Reporting option, we would have been put at a severe disadvantage because our fund raising efforts had been discontinued. *If* Commissioner Mooney had received approval to change reporting options by the executive director, we would have been notified of change as part of the process and we could have responded in the appropriate manner.

3. the difference in voting trends between the early voters and the late voters

On October 23, 2003, Commissioner Mooney spent \$1,050 on radio advertisements. October 23 was 8 days after the absentee ballots arrived, and 11 days before the election. As shown by Table II, I was 46 votes ahead of Commissioner Mooney when the absentee votes were counted. Early in the vote counting process, the vote count is dominated by absentee ballots. These absentee votes would not have been influenced by the large advertising effort that Commissioner Mooney unlawfully staged in the last weeks of the election. The margin reversed in favor of Commissioner Mooney when the Election Day votes were counted. This reversal can be attributed to the large advertising effort that Commissioner Mooney unlawfully staged in the last weeks of the election.

Table II. Vote Counting History

Date	Votes for Mooney	Votes for Wetcher	Vote Margin
11/5/03	2347	2391	-44
11/6/03	2513	2559	-46
11/10/03	3121	3087	34
11/13/03	3228	3202	26
11/19/03	3311	3289	22
11/26/03	3314	3293	21

As an elected official, Commissioner Mooney has solemnly sworn to support the "Laws of the State of Washington" (Exhibit A). By his disregard of the law, I believe Commissioner Mooney violated the following policies that are set forth in RCW 42.17.010:

(1) That political campaign and lobbying contributions and expenditures be fully disclosed to the public and that secrecy is to be avoided.

(2) That the people have the right to expect from their elected representatives at all levels of government the utmost of integrity, honesty, and fairness in their dealings.

(3) That the people shall be assured that the private financial dealings of their public officials, and of candidates for those offices, present no conflict of interest between the public trust and private interest.

(4) That our representative form of government is founded on a belief that those entrusted with the offices of government have nothing to fear from full public disclosure of their financial and business holdings, provided those officials deal honestly and fairly with the people.

(5) That public confidence in government at all levels is essential and must be promoted by all possible means.

(6) That public confidence in government at all levels can best be sustained by assuring the people of the impartiality and honesty of the officials in all public transactions and decisions.

(10) That the public's right to know of the financing of political campaigns and lobbying and the financial affairs of elected officials and candidates far outweighs any right that these matters remain secret and private.

(11) That, mindful of the right of individuals to privacy and of the desirability of the efficient administration of government, full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society.

Summary

During 2003 election, Commissioner Mooney knowingly or negligently violated the Public Disclosure law. The violations are as follows:

- Commissioner Mooney violated RCW 42.17.080 and 42.17.090 and WAC 390-16-105 by accepting contributions totaling \$5,377 and making expenditures totaling \$4,906 or more in excess of the \$3,500 mini reporting limit (Lawrence Soriano, PDC Case No. 02-263).
- Per WAC 390-16-125(4), Commissioner Mooney also violated the applicable provisions of RCW 42.17.040 – 42.17.090 since he “knowingly or negligently caused or permitted the limitations” to be exceeded.
- Commissioner Mooney violated WAC 390-16-125 by failing to “apply to the commission for authorization to change reporting options”.
- Commissioner Mooney violated RCW 42.17.065(5) by failing to “maintain books of account accurately reflecting all contributions and expenditures on a current basis within five business days of receipt or expenditure.”
- Commissioner Mooney violated WAC 390-16-125(1)(c) by failing to submit “a statement affirming that all known candidates for the offices being sought have been notified personally of the application stating the manner and date of such notification.”
- Commissioner Mooney violated RCW 42.17.080 by failing to file a C3 report for the \$300 bank deposit that was made on November 6, 2003. Commissioner Mooney also violated RCW 42.17.242 by concealing identity of source of this deposit.

The election was decided in Commissioner Mooney’s favor by 3,314 votes to 3,293 votes, a 21-vote difference. If only 11 voters of those 21 voters had decided to vote for me instead of Commissioner Mooney, I, Brian Wetcher would have won by 3304 votes to 3303 votes, a 1-vote difference. Commissioner Mooney’s unlawful and unfair 40% advantage in expenditures was used for newspaper and radio advertisements and certainly influenced at least 11 voters.

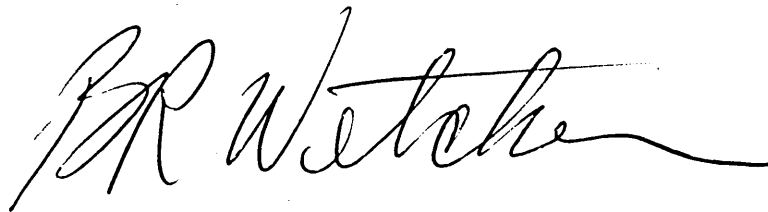
Remedy Sought

Commissioner Pat Mooney, an elected official, knowingly or negligently violated Washington State's Open Government Act (RCW 42.17), and in so doing "probably affected the outcome" of the November 4, 2003 election of the District 4 Commissioner for the Port of Anacortes. By mandate, the Public Disclosure Commission cannot tolerate gross negligence and evasions of the act. "Acting without fear or favor, the staff will bring to the commissioners for appropriate action all matters where there is evidence of a material violation of chapter 42.17 RCW and/or lack of substantial compliance" (WAC 390-12-050(8)).

Since Commissioner Mooney's violations "probably affected the outcome" of the election, I formally request that the Washington State Public Disclosure Commission immediately refer this matter to the State's Attorney General and to the Skagit County Prosecuting Attorney as provided in RCW 42.17.360 (RCW 42.17.395(3)), so that a court may determine whether "the result of said election should be held void and whether a special election should be held within sixty days of such finding" (RCW 42.17.390(1)).

Sincerely Yours,

Brian Wetcher



Attachments: Oath of Office, Commissioner Mooney, and January 2000
Standard Political Broadcast Agreement, KLKI
KLKI Rate Sheet
Formal Complaint, Michael Evans November 3/03
Skagit Valley Herald Article, 'Complaint filed with PDC', November 10/03
Email to Sally Parker from Brian Wetcher, November 18/03
Pat Mooney's PDC online filings, August-November 2003

Pat Mooney Chronology of Campaign

Period Covered/ Rprt Dep Date	Due Date	Filed date	Days Late	Cash Contrib	Cand. Loan	Total Contrib	Expend	Order/ Invoice Date	Order Amount	Paid Date	Total Camp Contrib	Total Camp Exp
C-3 9/8/03	9/15/03	10/31/03	46	250.00		250.00	0.00				250.00	
A 9/15/03	10/14/03	10/31/03	17				0.00	9/15/2003	921.47			#21592 Ordered signs
A 9/15/03	10/14/03	10/31/03	17				101.68					101.68 Misc
A 9/15/03	10/14/03	10/31/03	17				138.32	9/11/2003	138.32	9/15/03		240.00 Mailing List
A 9/16/03	10/14/03	10/31/03	17				450.00	9/15/2003		9/16/03		690.00 #21592 part. Pay Signs
C-3 9/16/03	9/22/03	10/31/03	39		2,000.00	2,000.00	0.00				2,250.00	
C-3 9/22/03	9/29/03	10/31/03	32	300.00		300.00	0.00				2,550.00	
A 9/26/03	10/14/03	10/31/03	17				471.47	9/15/2003		9/26/03		1,161.47 #21592 part. Pay Signs
A 10/6/03	10/14/03	10/31/03	17				873.60	10/6/2003	873.60	10/6/03		2,035.07 Newspaper ads
A 10/6/03	10/14/03	10/31/03	17				100.00	10/3/2003	100.00	10/6/03		2,135.07 Newspaper ads
A 10/7/04	10/14/03	10/31/03	17				97.50	10/7/2003	97.50	10/7/03		2,232.57 Newspaper ads
C-3 10/9/03	10/13/03	10/31/03	18		500.00	500.00	0				3,050.00	
A 10/9/03	10/28/03	10/31/03	3				517.13	10/9/2003	517.13			2,749.70 Layout/print brochures
10/9/03	Pat Mooney orders radio ads						0.00					2,749.70
10/9/03	10/28/03 not filed						0.00					\$2,749.70 + 1,050 =
C-3 10/15/03	10/20/03	10/31/03	11	100.00		100.00	0	10/9/2003	1,050.00	10/23/03		3,799.70
A 10/15/03	10/28/03	10/31/03	3				366.87	10/15/2003			3,150.00	
10/20/03	Pat Mooney first calls PDC-says will pull his money out to comply with mini limits						1,050.00	10/9/2003	1,050.00	10/23/03		4,166.57 Mailing and Postage
A 10/23/03	10/28/03	10/31/03	3				0					4,166.57
C-3 10/24/03	10/27/03	10/31/03	4		627.31	627.31	0	10/9/2003	1,050.00	10/23/03		4,166.57 Radio Advertising
A 10/24/03	10/28/03	10/31/03	3				627.31	10/15/2003	627.31	10/24/03		3,777.31
10/26/03	Pat Mooney talks with Wetcher that he would have no problem meeting mini limits (per Wetcher)						0.00					4,793.88 Postage and Mailing
C-3 10/27/03	11/3/03	10/31/03	0		1,200.00	1,200.00	0.00				4,977.31	
C-3 10/28/03	11/3/03	10/31/03	0	100.00		100.00	0.00				5,077.31	
10/31/03	Pat Mooney submits disclosure reports						0.00					4,793.88
9/1/03-												
C-4 10/29/03	10/28/03	10/31/03	3				0.00					
C-3 11/6/03	12/10/03	1/27/04	48	300.00		300.00	0.00				5,077.31	4,793.88
A 11/7/03	12/10/03	11/11/03	0				75.00				5,377.31	
A 11/7/03	12/10/03	11/11/03	0				37.12					4,868.88 Newspaper Ad
11/11/03	Pat Mooney submits Amended C-1 to PDC changing to full reporting											4,906.00 Supplies
10/31/03-												
C-4 11/10/03	12/10/03	11/10/03	0				0.00				5,377.31	4,906.00
11/11/03-												
11/30/03	12/10/03	12/4/03	0				0.00				5,377.31	4,906.00
12/01/03-												
12/31/03	1/12/04	1/12/04	0	2.18		2.18	37.94				5,379.49	4,943.94 Bank interest/charges & supplies
	Total			1,052.18	4,327.31	5,379.49	4,943.94				5,379.49	4,943.94

EXHIBIT #5
of 1

RECEIVED

NOV 13 2003

November 11, 2003

Public Disclosure Commission

DATE FILED PDC

NOV 11 2003

To: Public Disclosure Commission
From: Pat D. Mooney

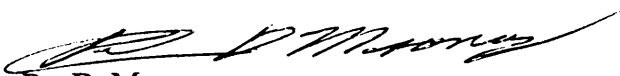
Attention: Phil Stutzman
Director of Compliance

Subject: Disclosure form C4

I respectfully submit my records of C I reporting be changed from Mini-Reporting to Full Reporting. It was discovered on 10/23/03 that I had reached \$3,061.26 in expenditures, with many more bills to come in to me.

Total paid out for this campaign has reached \$4,906.00. As of the above date all bills are in and are paid.

I ran my campaign of November 1999 on the Mini-Report, and assumed I could do the same this year. Due to increase costs, it ran higher than expected. With the pressures of a one man campaign I discovered on 10/23/03, that I had gone over limits, I notified the committee.



Pat D. Mooney
2010 41st St.
Anacorettes, Wash. 98221
Enclosures Included

EXHIBIT #6
1 of 1

RECEIVED

NOV 21 2003

November 20, 2003

Public Disclosure Commission

Philip E. Stutzman, Director of Compliance
Public Disclosure Commission, State of Washington
711 Capitol Way, Room 206
P.O. Box 40908
Olympia, WA 98504-0908

Subject: Complaint Filed by Michael Evans against Pat. D. Mooney – PDC Case No. 04-310

Dear Mr. Stutzman:

This is a letter of response from Mr. Pat D. Mooney; 2010 41st Street; Anacortes, WA. 98221. I trust that my responses are adequate to resolve all concerns.

Allegation #1 – Mr. Mooney changed his reporting from Mini-Recording to Full-Reporting:

Response: In no way was this a political ploy. I simply did not know I had spent that much until the bills started coming in. At that time I called directly to the PDC and spoke with Sally Parker on 10/20/03. I originally reported the date of that conversation as 10/23/03 in error, but by your records it was 10/20/03. I received all new forms for Full Reporting within a few days. I mailed the completed Full Reporting forms with my cover letter requesting the change on 11/11/03. I had been told my new report would go to the committee for consideration. I did not know it was necessary to inform Mr. Wetcher of this change. This was an honest oversight on my part.

Allegation #2 - Mr. Mooney reported his campaign's material expenditures failing to report the purchase of signs and wooden stakes – both new and old.

Response: The costs of the new signs as listed on Schedule A (10/29/03) total \$921.47. The costs of the wooden stakes on Schedule A (11/06/03) total \$37.12. I was not aware that I was required to list the value of the wooden stakes that I already owned prior to this campaign. The value of the pre-owned stakes is minimal.

Allegation #3 – Mr. Mooney incorrectly reported the aggregate total of cash receipts – money contributions.

Response: I mistakenly placed the aggregate total in the wrong column. The total on that page shows this to be a fact. Furthermore, I have not ever received a contribution over \$300.

Thank you for your assistance in resolving these issues. If I can be of further assistance please call me at 360-293-3260.

Sincerely,


Pat D. Mooney

EXHIBIT # 7
1 of 1

Pat D. Mooney
2010 41st Street
Anacortes, WA 98221

January 6, 2004

RECEIVED
JAN 08 2004
Public Disclosure Commission

Phillip Stutzman
Public Disclosure Commission
711 Capitol Way, Room 206
P.O. Box 40908
Olympia, WA 98504-0908

Re: PDC Case No. 04-310
Complaint Filed by Brian Wetcher

Dear Mr. Stutzman:

You provided me with a copy of the Complaint filed by Brian Wetcher. His allegations are that I violated WAC 390-16-105 by exceeding the limits of Mini-reporting, and by failing to timely file reports of contributions and expenditures in violation of RCW 42.17.080 and .090.

Mr. Wetcher's complaint is a long letter. I differ with many of the details in the letter and his interpretation of them. But it is not necessary to refute every point, for I agree with the overall conclusion. That is, without obtaining approval from the PDC executive director, my campaign expenditures of \$4,906 exceeded the \$3,500 limit for Mini-reporting.

However, as you know, I notified the Public Disclosure Commission promptly upon learning that I was going to exceed the limit. This violation was not intentional and knowing, but was negligence on my part as I will explain below. I regret my oversight. I attribute my error to an overwhelming workload of business, community, civic (e.g., Port of Anacortes) and family activities.

Regarding the untimely reporting of contribution expenditures, I filed the appropriate forms as quickly as I could once it became apparent that I would have to comply with full reporting rather than Mini-reporting.

Events

The key events are as follows:

August 6, 2003: I filed my initial C1 choosing Mini-reporting.

September and early October 2003: I incurred expenses for signs and newspaper ads.

October 9, 2003: I signed a contract to purchase radio advertising for \$1,050.

October 18-19, 2003: I discovered that I had spent \$3,061.23, and still had to pay for the radio contract.

October 20, 2003: I called the Public Disclosure Commission and advised that I would be exceeding the \$3,500 limitation for Mini-reporting. I was advised to file a new C1 and request approval to exceed the limit. The PDC would send forms to me to do that.

October 29, 2003: After receiving the forms, I prepared an updated C1 indicating full reporting, and faxed and mailed it to the PDC. I also mailed a C4 to the PDC.

November 4, 2003: Election.

November 11, 2003: Upon request of the PDC, I sent a letter advising that I had exceeded the limit of mini-reporting, and enclosing again the updated C1.

Explanation

Those are the events – here is my explanation of what happened and why.

When I first ran for port commissioner in 1999, I utilized Mini reporting. At that time, the limit was \$2,000, and I spent almost exactly that. When I began planning my campaign for re-election in 2003, I learned that the Mini reporting limit had been increased to \$3,500. I assumed that I could conduct this campaign within the increased limit, so I opted for Mini reporting again.

After the campaign began, I incurred the expenditures for the usual type of campaign advertising, yard signs and newspaper ads. In October, I decided to utilize radio advertising, and signed a contract to do that.

I did not have anyone assist me with the finances of this campaign. (In hindsight, that was a mistake.) During the months of the campaign, I was exceptionally busy. I own and operate Piston Service of Anacortes, Inc., a business in Anacortes. At the same time, I was serving as President of the Board of Commissioners of the Port of Anacortes, and also volunteering a significant amount of time with the Salvation Army and our church. In addition, I was personally campaigning for re-election.

In the midst of this very busy time, during the weekend of October 18-19, I examined the campaign's checking account to see exactly where I was with our finances. I was shocked to realize that the amount of money I had spent at that time (\$3,061.23), plus the amount of money I was contractually obligated to spend (\$1,050), would mean that I would exceed the limit of Mini-reporting. Looking back now, I should have realized this was happening when I signed the radio advertisement, but I did not. I have no excuse for that; I was just too involved in other things to recognize that this was occurring.

As a result of this discovery, I promptly called the Public Disclosure Commission on Monday, October 20, 2003. I was advised that, as it was less than thirty days before the election, I was supposed to obtain permission from the PDC executive director to exceed the Mini-reporting limit. But, since I had already done so (or would when I paid for the radio advertising), I should now prepare a new C1 opting for full reporting. I was also advised to call my opponent and advise that I was going to exceed the Mini reporting limit.

The PDC staff person advised that she would send me the appropriate forms to fill out for full reporting. I received the forms a few days later, and I completed a new C1 (and C4) and faxed and mailed it to the PDC on October 29th. (Apparently, the mailed copy arrived at the PDC on October 31.) The new C1 indicated that I was going to use the full reporting system.

In Mr. Wetcher's Complaint, he alleges that I told him on October 26 that I would stay within the Mini-reporting limit. That is incorrect; I told him no such thing. Why would I say that when I had already reported to the PDC that I was going to exceed the Mini reporting limit? Upon reflection, I should have told Mr. Wetcher that I was going to exceed the Mini reporting limit, as suggested by the PDC. I have no real excuse for not doing this, other than to say that dealing with Mr. Wetcher was uncomfortable for me.

Apparently Mr. Wetcher is claiming that I knowingly exceeded the Mini reporting limit. I did not. I admit I was negligent in not monitoring the financial obligations that

the campaign was incurring to ensure that it did not exceed the \$3,500 limit. But as soon as I determined that we would exceed the limit, I contacted the PDC immediately.

Effect on the Election

Mr. Wetcher argues that my exceeding the limit by \$1,406 effected the election. I disagree, and challenge him or anyone else to show how campaign expenditures directly effect any election, let alone this one. There are numerous examples of individuals being elected who spend less than an opponent. For example, in my 1999 election, I spent approximately \$2,000 and my opponent spent about \$6,500. Yet I won.

We all know there are many, many factors that determine the outcome of an election. For example, I received an endorsement from the Anacortes American newspaper on October 22, 2003. How do we measure the impact of that event against my spending \$1,406 more than the Mini reporting limit? There is simply no evidence that my spending that money caused Mr. Wetcher to lose.

Further, his argument regarding absentee ballots is not credible. He claims that the radio advertising in the last half of October unduly influenced the absentee ballots in my favor. This is incorrect. My count of the absentee ballots show that Mr. Wetcher actually received more absentee votes than I did. I contend that it is impossible to determine what influenced the voters in this election, and there is little likelihood that my spending an extra \$1,406 unfairly increased the election results.

Full Reporting

As for the untimely reporting of contributions and expenditures required by full reporting, that is of course correct. While I was utilizing Mini reporting, I didn't need to file financial reports. When I realized that I was going to exceed Mini reporting, I knew I then needed to comply with the requirements of full reporting. I did that as soon as I could after receiving the forms from the PDC, and filed the C4 on October 29, 2003. I also filed additional C4's on November 10 and 30, as required.

Phillip Stutzman
January 6, 2004
Page 5

Conclusion

I apologize to the public, Mr. Wetcher, and the PDC for my lack of attention to the amount of money my campaign was expending. As soon as I learned that I would exceed the \$3,500 limit, I notified the PDC and then took the steps necessary to comply with full reporting.

I can guarantee that, if I run for re-election in four years, I will insure that I comply properly with either Mini or full reporting.

Very truly yours,



Pat D. Mooney

Sally Parker

From: fidalgolandscape@comcast.net
Sent: Tuesday, November 18, 2003 3:07 PM
To: Sally Parker
Subject: Mooney complaint

Sally- Thank you for your courteous and friendly attention this afternoon; I will try to make this statement as straightforward as possible.

Mr. Mooney has publically stated that he 'discovered' his campaign donations and expenditures exceeded the required legal limits as of the 23rd of October; at that time, by PDC regulations he was required to notify my campaign, preferably by certified mail immediately. On the evening of October 26, following a candidate forum on Guemas Island Mr. Mooney and I had a private conversation while waiting for the return ferry. We discussed some threatening telephone messages and anonymous letters directed against my campaign, as well as some concerns my campaign staff had expressed to me about the amounts of money he seemed to be spending in his campaign. He personally assured me that he was a committee of one, he had not had the time to go out and raise any where near the \$3500 limit, and he would certainly have no problem meeting the mini reporting criteria, and that his books would be open and available for public inspection upon request at his campaign address. None of these statements proved to be true. He deliberately lied to my face in a calculated effort to gain an unfair and unlawful advantage. Further, everyone makes mistakes. What matters is what we do after we make our mistakes. Even if Mr. Mooney is given the benefit of the doubt about his initial financing 'realization', he continued to spend the unlawful contributions and to deliberately lie about it directly to the people he was required to notify. I had no expectation that he would so blatantly lie, because he was required to tell me the truth under PDC regulations, which I believe have statutory and regulatory authority over such unethical and unlawful behavior by candidates for public office in this state. My campaign had the opportunity to receive many more donations than we accepted; we also had the opportunity to use both radio and televised campaign advertisements, as well as mass mailings. I turned those opportunities down because I believed that \$3500 was a reasonable and ethical campaign expenditure limit for such an office, and because my opponent had committed to the same regulatory limits and criteria, as of the final date for lawfully filing a change in campaign financing status. Mr. Mooney has proven his intentions by sins of not only omission but commission, calculated and deliberate, by these actions alone. Coupled with the numerous other irregularities evident in his campaign financing accounting, it is clear to me that Mr. Mooney attempted to steal this election. Incumbents should win 95% of the time, with somewhere around a 60/40 margin; this incumbent has a less than 1/2 of 1% lead right now-22 votes in an election with over 6000 votes cast. Considering this did Mr. Mooney's unlawful actions make a difference in this election? YES !

Thank you for your attention to this serious situation; I believe these violations are serious enough to call Mr. Mooney's eligibility for public office into question; if these violations do not rise to serious levels of PDC consideration, but only result in a slap on the wrist or censure, we will know how to conduct ourselves in future election campaigns. The public is a quick study; we will learn the lessons taught by this election in time for the next one.

All I ask is justice,
 Brian R. Wetcher

2/17/2004

EXHIBIT # 9
 1 of 1